IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 2568 OF 1992
WITH
CIVIL WRIT PETITION NO. 2572 OF 1992.

CIVIL WRIT PETITION NO. 2568 OF 1992

Maharashtra State Road Transport
Corporation at Maharashtra
Vahatuk Bhavan, Bombay Central,
Bombay-400 008. .. Petitioners.

V/s

1. Shri Kisan Sitaram Pawar
2. Mrs. Usha Kisan Pawar
3. Miss Anita Kisan Pawar
4. Master Nitin Kisan Pawar

All residing at Dattanagar
Kalewadi, Akrudi, Pune-411 035 .. Respondents.

CIVIL WRIT PETITION NO. 2572 OF 1992

Maharashtra State Road Transport
Corporation at Maharashtra
Vahatuk Bhavan, Bombay Central,
Bombay-400 008. .. Petitioners.

V/s

1. Shri Gajanan Ganpat Patil
2. Mukta Gajanan Patil
3. Mahesh Gajanan Patil
4. Haresh Gajanan Patil

All residing at Sukhakarta
Housing Society Kamgar Nagar,
Pimpri, Pune-411 018 ...Respondents.

Mr. C.M. Lokesh with Mr. G.S. hegde for the petitioners.

CORAM : D.G.DESHPANDE, J.

DATE : 13TH SEPTEMBER, 2006.

ORAL ORDER.

. Heard Mr. Lokesh, Advocate for the petitioners. Nobody appears for the contesting respondent No.1.

2. The matter arise out of order of the Motor Accident Claim Tribunal, Alibaug in Claim Application No. 177 of 1991. An accident occurred and the claimants filed a claim petition under Section 166 of M.V. Act for claiming compensation. While that application was pending, they have also filed application under Section 140 of M.V. Act for fixing no fault liability. That application was opposed by the present petitioners on the ground that when the accident occurred at that time itself without considering as to who is liable, the petitioners have paid Rs. 50,000/- to the claimants and therefore, now nothing remained to be decided or determined under Section 140 of M.V. Act. However, this contention of the petitioners was negatived by the Tribunal by holding that "in this connection it may be noted that no fault liability as contemplated under Section 140 of M.V. Act is quite distinct from any other payments. At the most, such on the spot payment would be taken into consideration while determining the quantum of compensation to be paid at the time of final adjudication" and therefore, the

Tribunal has directed the petitioner to deposit Rs.25,000/- within 4 weeks jointly and severally.

3. This Court while admitting the petition had granted interim stay. The approach of the Tribunal does not appear to be just and proper. It is not in dispute that the petitioners has paid Rs. 50,000/- to the claimants even before the claimants moved before the Tribunal for any kind of compensation. The Tribunal has fixed the liability of the petitioners as Rs.25,000/- and respondent No.2 was also directed to pay Rs. 25,000/- towards no fault liability. If, before the claimants invoke under Section 140 of M.V. Act the claimants were fully paid by the petitioners, then the prayer of the petitioners for adjustment of amounts towards no fault liability should have been accepted particularly, when the proviso to Section 140 of M.V. Act should have been invoked by the Tribunal in this regard. The said provisions is as under:

> "Liability to pay compensation in certain cases on the principle of no fault:-
>
> (1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or mother vehicles, the owner of the vehicle shall, or as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay

compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1), in respect of the death of any person shall be affixed sum of (fifty thousand rupees) and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of (twenty-five thousand rupees).

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement by reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is labile to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force.

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A"

. The impugned order of the Tribunal dated 26th

November, 1991 is modified so far as it relates to the petitioners and it is clarified that from the amount of Rs. 50,000/- paid to the claimants will be entitled to adjustment of Rs. 25,000/- towards no fault liability. Rule made absolute in this regard. No order as to costs.

(D.G.DESHPANDE, J.)